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PROBLEMS OF SOCIAL UNREST—III—THE SOVIET IDEA OF INDUSTRIAL CONTROL OF BUSINESS.

From Russia comes the notion that all the actual workers in a business are entitled to a share in directing the affairs of the business. We believe it is also a part of the same scheme that every worker should have an *equal* voice in the control of the business. This idea, though highly fantastical to anyone imbued with American conceptions of property rights, is, nevertheless, so plausible and attractive to untrained and impractical minds as to make it necessary that its inherent weakness should be pointed out.

So far as this new scheme of business management rests upon the Marxian postulate of the separation of society into three classes, the nobility, the bourgeois and the proletariat, it is wholly out of place in America. For we do not have any of these classes in America. There are no class distinctions in America. The mouse trap peddler may in a few years become the leading railroad magnate in the country and his daughter may marry the best blood in Europe. All men in this country are equal before the law and most of the great business men today came up from the ranks of labor. The workers in this country will never be so foolish as to fasten upon themselves the ignominious designation of "proletarian." A proletarian is, strictly, a man with no political or property rights. We have no proletariat in America. We are all workers, from bank president down to office boy, and the office boy will in all probability become the bank president of tomorrow. Therein lies the fascination of American social life. There are no classes and rewards of merit are handed out impartially to every citizen.

So far as the soviet scheme of industrial control rests upon the idea that all men are equal in ability and that each is entitled to the same reward without regard to merit or industry, the scheme is contrary to human experience and must necessarily fail. Men are not equal in intelligence, nor are they all fitted for the same task. The poet would probably be a failure in business, and the merchant would in many cases not succeed as a lawyer or a doctor. Every man must fit himself into the social fabric in such a way as to contribute the best that is in him to the society of which he is a part, without forever putting the emphasis on the monetary consideration. An exclusively materialistic conception of life is debasing. Human life must be measured in terms of service to society and he is greatest who serves society the best. This is the basis of real success in business and applies equally to the head of a business and to every worker in it.

The idea that values exist in things—in money, lands, salaries and houses is the *ignis fatuus* that has led many ignorant men to seek to tear down the social organization and grab their share of the spoil. In Russia the soviet seized all the gold in the banks, but then soon discovered that gold is of no value if everybody refuses to work. If farmers will not raise wheat and shoemakers will not make shoes, even a millionaire must starve and his children go barefoot.

It is ideas that rule the world. They are the only real things that exist. They are property. Some man *thinks* and from his thinking a new business results. That business is a product of his brain, it is a part of himself and in a most peculiar sense it is his. He may carry out his own idea, but if he gets another man to help him one would not say that the helper is a half-owner of the business. When Edison invented the incandescent light the idea was his own, and those who helped him to make the bulbs, while entitled to be well paid for their labor, would be the last to claim the right to be known as the inventors of the

light, nor did any of these men seek to interfere with Mr. Edison's plans. If every man in the shop had insisted on his own way of making these lights it is probable that we would still be using coal oil lamps and candles.

Let us apply this idea to any ordinary business. A hundred men start in the shoe business. Ninety-nine fail and one succeeds. The successful man succeeded not because he could make shoes any better than the others, but because he had a better *idea* of *organizing* his business, a better *idea* of selling his shoes and a better *idea* about reducing the costs of production. His business is founded on his ideas and these ideas are his own. Therefore the business is his. If the ninety-nine other men go to work for the one who had the right idea they are entitled to a fair share of the produce of their labor, but they are not entitled to substitute their ideas of running the business for his. That would clearly not be fair to the man whose brain made the business possible, nor would it be fair to the other workers or to the business itself, since, ultimately, it would result in the destruction of the business. The big part, the essential part, of any great business is not the big factory buildings, nor the large capital invested, nor the multitude of products manufactured, but the *idea* that made a success of these elements.

The workers are not the only creators of values. The man with the idea is the man who makes the creation of new values possible. The farmer who makes a good profit on his potatoes pays tribute to Burbank, the man who took the eyes out of potatoes and made them bigger and better. Every linotype operator who draws down his large pay envelope every week acknowledges his indebtedness to Mergenthaler. So every worker in any business recognizes his indebtedness to the man with the "big idea" at the head of his business who makes the business possible and keeps it going.

Moreover, aside from the injustice of depriving the man or men whose ideas make the business of their right of control, the interference would be suicidal to the interests of the worker himself. The co-operative scheme of business organization is a failure wherever tried. Too many cooks invariably spoil the broth. This is a maxim based on human experience, and it is unnecessary to justify it by argument. The best way for the workers in any industry to kill the goose that is now laying so many golden eggs for their benefit is to drive out the man who has the ideas. Under such a plan conditions would be as bad in this country as they are in Russia today, where business is demoralized and production seriously interfered with by incompetent soviet control. Hungary abandoned the scheme in a hurry after a few months' experience.

The only serious proposal to place any industry in this country under the control of the workers was incorporated in the Plumb plan for the control of the railroads by the railroad operators. The plan proposed that Congress should buy all the railroads and turn them over to the operatives to manage. What amazing impudence to ask all the people to "chip in" and pay a trifle over twenty billion dollars for all the railroad systems in the country and then turn them over to a few thousand operatives to exploit for their own interest! The first result of such a scheme would be to drive out of the business of operating the railroads every competent executive officer and leave the management to those who would had no other incentive than to feather their own nests without regard to the service rendered. This must necessarily be true, for what interest would any operative have to improve the service? Where would be, for any man, the incentive to think and plan for the benefit of the railroads when there are no rewards, and, for that matter, no liabilities? It is interesting to note that in the bill incorporating the Plumb plan introduced in Congress it is provided that any deficits incurred in operating the railroads should be provided for by taxation. Why did not

the workers agree to assume the burden of meeting any such deficit by assessments against the workers themselves?

It has been pointed out that if the railroad workers should agree to pool a percentage of their earnings they could themselves purchase the majority of the stock in all the railroad companies in a very short time and absolutely control them. There would be no objection to such a scheme for the workers, having by purchase, made the roads their own property, would do just as the present owners are doing—hire the best brains they could find to manage *their* property.

But the real danger of such a scheme lies not so much in the fact that in any particular case the business thus subjected to industrial control would be seriously impaired, but because the tendency would be to put other business enterprises under the same control. In view of the fact that all skilled workers are organized in guilds known as labor unions, and since these local organizations are affiliated with one central body, it would not be long before all the business of the country would be in the control of a small coterie of men who are the national representatives of the federated unions.

It is not difficult to see, therefore, that if the power to control all business were thus permitted to become centered in a few men dominating the American Federation of Labor, the government and the people, and even the workers themselves, would be completely at their mercy. It would be the largest trust the world has ever seen and would completely dominate the government. In fact, it would be the government.

The right of property is a sacred right. It is necessary to any orderly development of civilization. While the law should do everything it can to prevent the unlawful accumulation of property, and should, without hesitation, take away from any man that which he gains by unfair and unlawful methods, we must be careful not to jeopardize the right of property itself. Every man is entitled to the product of his own brain and that is what property is. A man's business is his property, and to interfere with his control of that business, except so far as may be necessary for the public interest, is robbing him of his property. If society can take away one man's property and give it to another, it can take away every man's property and give it to whomsoever a temporary political majority may designate. Property rights would then rest on the primitive basis of might, and the rule would be in full force that

"They should take who have the power,
And they should keep who can."

NOTES OF IMPORTANT DECISIONS.

WHAT WOULD HAVE BEEN AN EXCESSIVE VERDICT TWO YEARS AGO IS MODERATE TODAY IN VIEW OF THE HIGH COST OF LIVING.—Who was it that said the courts are always lagging ten years behind the times? We wish to call such person's attention to the recent case of Philadelphia, etc., R. R. Co. v. McKibbin, 259 Fed. Rep. 476. In this case the court is right up to the minute and is ready to take judicial notice of the fact that the dollar is not as valuable as it was two years ago, and will not buy as much of the necessaries of life. For this reason verdicts should be larger and amounts which two years ago would be held excessive would be held moderate today.

In the McKibbin case the plaintiff in his first suit two years ago recovered a very large verdict which the court set aside as being excessive. The amount is not stated in the opinion. On the second trial the verdict was again larger than the amount to which the court had reduced the first verdict. But this second verdict the court refused to reduce since the amount which the court thought unreasonable two years ago is not regarded as unreasonable today. In overruling an assignment of error

based on the failure of the trial court to reduce the second verdict, the Court of Appeals (3rd Cir.) said:

"The last assignment of error is based upon the refusal of the trial judge to grant a new trial or reduce the amount of the verdict upon the ground that it was excessive. The contention in this respect is predicated upon the proposition that the refusal amounted to an abuse of discretion, and proceeds on the theory that as the amount of damages awarded by the jury was in excess of the amount to which the trial judge had reduced a verdict rendered on a previous trial, his failure to make a like reduction in the verdict rendered on the second trial, evidences a clear abuse of discretion. We are unable to assent to this view. The fact that nearly two years' interest had accrued on the amount which the trial judge considered on the first trial was not excessive, and the change in economic conditions between the time of the second trial and the first trial fully justified him in declining to reduce the verdict to the amount which he felt was proper at the time of the first trial."

BANKRUPTCY AS A GROUND FOR REMOVAL OF SUIT FROM STATE TO FEDERAL COURT.—The Bankrupt Court cannot be made the catch-all of all the litigation pending in state court affecting the bankrupt's estate. This is the decision in the recent case of In re Vadner, 259 Fed. 614.

Vadner, a voluntary bankrupt, had previous to his petition got "in bad" with his wife, who had filed three suits against him in Utah, their home. One suit was for money belonging to the wife, which had been loaned to the husband. A large judgment was rendered against the husband and was pending on appeal. Another suit was for divorce and alimony and a third suit by the wife to set aside alleged fraudulent transfers of his property made by Vadner to his father and mother.

To escape this avalanche of matrimonial misfortune, Vadner went to Nevada and filed a voluntary petition in bankruptcy. Petition having been granted, the trustee, at suggestion of Vadner, had all the Utah suits transferred to the U. S. District Court of Nevada, which was administering the bankrupt's estate. In granting the motion to remand these suits to the Utah courts, the court said:

"Defendants place their main reliance on the fact that Vadner had been adjudged a bankrupt in this court. If this circumstance is sufficient to require the divorce case, the law case, and the equity suit to be removed to the federal court for Nevada, and each issue, notwithstanding the judgment, to be tried de novo, it is apparent that the Bankruptcy Act (Act July 1, 1898, c. 541, 30 Stat. 544) affords a method of bringing into the federal tribunals civil suits without limit. Any person, except a municipal, railroad, insurance, or banking corporation, is entitled to the benefits of the Bankruptcy Act as a voluntary bankrupt. If such a person owes debts, however small, he may file a petition. It is not necessary for him to allege or prove insolvency; and, furthermore, his petition cannot be opposed by his creditors. Can such a person, finding himself involved in litigation, in which the decision has been, or is likely to be, adverse, by filing a voluntary petition in bankruptcy, cause the suits against him to be removed to a federal court and there tried anew? If under such circumstances the present litigation is removable from the Utah state court to the United States District Court for Nevada, what is to prevent a person who is sued in a superior court of California from residing for the greater part of the next six months in Maine, and then and there filing a petition in voluntary bankruptcy, and thus conferring on the United States District Court for Maine exclusive jurisdiction over the controversy pending in the California state court? The possible uses which might thus be made of the Bankruptcy Act are startling to contemplate."

DISREGARDING TECHNICAL ERRORS.

In March, 1919, a bill passed Congress and was signed by the President which added the following clause to Section 269 of the Judicial Code:

"On the hearing of any appeal, *certiorari*, writ of error, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors or defects or to exceptions which do not affect the substantial rights of the parties."

This amendment, in substantially the form in which it was adopted, had long been recommended by the American Bar Association. It is important again to call it to the attention of the judiciary and of the bar, because there are so many lingering

remnants of the technical rules which it was intended to supersede. Two of these have recently been referred to in the columns of the Journal. On page 185 of the current volume a decision of the Supreme Court of Alabama[1] is quoted, in which the expression of a witness, "I was very careful," was held to be a reversible error. Long experience in the trial of jury cases has convinced me that such unguarded expressions of witnesses do not influence the jury, and that reversal because of them does injustice to the parties and brings discredit upon the administration of justice.

The report of the Committee on Jurisprudence and Law Reform of the Alabama Bar Association (page 145 of the reports of that association for 1915) led us to hope for a different decision in that state. Rule 45 of the Supreme Court of Alabama provides that no judgment will be reversed or new trial granted in any civil or criminal case on the ground of giving or refusal of special charges unless, in the opinion of the court after an examination of the entire cause, it appears that the error has injuriously affected the substantial rights of the party.

Mr. Pleasants, the chairman of the committee, continues (p. 147):

"Rule 45 is a step in the right direction, both with reference to reversals on account of instructions given or refused, and with reference to other matters to which it relates. No judgment should be reversed for the improper admission or rejection of evidence or for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it should appear that the error has probably injuriously affected the substantial rights of appellant. There might well be a statute following this rule."

Again on p. 203 of the current volume of the Central Law Journal, a decision of the Supreme Court of Illinois[2] is referred to. This held that one mistake in the name in an indictment was fatal, although taking the indictment as a whole the intention was plain and the offense sufficiently described. A previous decision in Illinois shows that the court had adopted a more liberal practice in reference to errors on the trial.[3] The court said:

"Upon the whole case it by no means appears that substantial justice has not been done by the verdict and judgment. In such case this court will not reverse a judgment even if errors have been committed by the court below upon the trial, in the admission or exclusion of evidence or in the giving or refusal of instructions."

It is very unfortunate that the Supreme Court should not have seen its way clear to apply this rule to clerical errors in an indictment. When there has been a trial and verdict these errors should certainly be held to have been cured.

However, the decision is made. In the interest of justice we hope that the federal statute just adopted will be followed by the legislature of Illinois.

The whole argument was expressed by Daniel Webster in summing up the Knapp case: The criminal law "punishes, not to satisfy any desire to inflict pain, but simply to prevent the repetition of crimes. When the guilty, therefore, are not punished, the law has so far failed of its purpose; the safety of the innocent is so far endangered. Every unpunished murder takes away something from the security of every man's life. Whenever a jury, through whimsical and ill-founded scruples, suffer the guilty to escape, they make themselves answerable for the augmented danger of the innocent."

The old law maxim is to the same effect: *"Judex damnatur cum nocens absolvitur"* —the judge himself is condemned when the guilty is released.

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(1) Houston v. Elrod, 81 So. Rep. 831.

(2) People v. Stoyan, 280 Ill. 300, 117 N. E. 464.

(3) Convert v. Bishop, etc., Co., 152 Ill. App. 516, p. 521.

THE INFLUENCE OF THE LAWYER UPON THE TREND OF MODERN LEGISLATION.

In this day of almost miraculous change in the industrial, commercial and social conditions of our land and other lands, no class of men are, or ought to be, more alert than the members of the Bar. The lawyer of the old school exerted a wonderful influence in shaping the trend of legislation and was an important factor in all the divisions and affairs of government. He was usually the recognized leader in his local community. Gradually his influence has been waning. By science and invention, distance has been wiped out. Messages are flashed from ocean to ocean, the aeroplane mounts the air and the submarine sails beneath the waves. The whole sphere of human activity and endeavor has changed. Communities that were isolated and had their own problems, have now become a part of the living, throbbing and constantly changing industrial and commercial world.

In the application of the principles of law and the fundamental principles of constitutional government, the lawyer should be the first to grasp the change and see that these principles are properly applied by a constructive development. The change has been so rapid that in my humble judgment the waning influence of the bar is in a measure due to the inability of the members of the legal profession to adjust themselves to such swift changes. Conditions have arisen that were never dreamed of when the old rules of law were established. The lawyer has endeavored to apply the old rules as interpreted by the courts, to the new conditions without, in many instances, comprehending the changed conditions under which such rules must be applied.

The great English statesman, William E. Gladstone, said that the Constitution of the United States "was the most wonderful work ever struck off at a given time by the brain and purpose of man." Under this fundamental law our country has grown to be the giant among the nations of the earth. Each state has fashioned its fundamental or constitutional law after that remarkable document. The growth and development of the nation, under such fundamental laws, is the wonder and admiration of all the peoples of the earth. "The star of empire now stands over America. As long as this great bulwark of freedom and progress stands, we shall grow as a nation in power and intelligence."

The lawyer has always taken particular pride in sustaining that fundamental law, but I fear has failed to grasp the changes under which it must be applied. One of the best citizens and ablest lawyers of South Dakota in an address at the meeting of the South Dakota State Bar Association a year ago, in discussing the proposed constitutional amendments to the State Constitution, said:

"The amendments give the legislature sufficient power to carry out the wildest dreams of the most advanced socialists, and by removing all limitations upon the power of taxation the legislature will be given the power to crush out all privately-conducted industries, which may come in competition with state managed institutions. In other words—collectivism is to be carried to its most extreme extent and individualism wiped out through the length and breadth of South Dakota. I do not believe that the people of South Dakota are ready for a state socialism of the most extreme type. That is, however, exactly what they will get if the proposed constitutional amendments are adopted."

With many things said in that address I agree, but, in spite of that able address, most of the amendments were ratified. Most of us have failed to grasp the changed conditions which make the ratification of such amendments possible. The increase of wealth and production and the distribution of the increased production has produced new conditions. Our every-day life is af-

fected by the collective action of individuals in distant states or countries. There is "an interdependence of modern life." The farm, the mine and the factory depend for their markets and supplies upon distant regions and upon the complicated process of transportation and change. Individualism has in a measure ceased. Collectivism has become a necessity for self-protection. The lawyer of today, if he is to check his waning influence, must recognize the arrival of these new conditions and see that the law of today is adapted and molded to meet these conditions.

In looking over the reports of the American Bar Association for the past few years, especially the report of the Committee on Noteworthy Changes in Statute Law, you will observe that the trend of modern legislation is toward collectivism as opposed to individualism; to laws affecting us collectively rather than to laws preserving individual rights. Among the changes noted is the enactment of such laws as the Bank Guaranty Act, Federal Farm Loan Act. Workmen's Compensation Laws, Child Labor Laws, Minimum Wage Scale for Women, Mothers' Pension Laws, Teachers' Pension Laws, Eight Hour Day Law, our Own Rural Credits Act and State Hail Insurance; the regulation and now practical prohibition of the liquor traffic; the creation by legislative enactment of public service commissions, and the delegating to such commissions powers undreamed of a few years ago. The emotion of many members of the legal profession has been stirred by the enactment of some such laws.

Serving for a few weeks with men in other walks of life in one of the legislative bodies of this state, has convinced me that this trend of legislation has come to stay, and that the influence of the lawyer will only be diminished if he simply stands aghast at the change. He must recognize the change and take his part in properly molding this tendency into a proper constructive development so that these new administrative agencies will not become instruments of oppression and wrong. He must recognize that there is less danger in the tendency of the times than the conservative mind of the lawyer realizes. In a country regulated by a government of the character under which we live we are constantly on the brink of what may appear to be a dangerous movement. The good sense and collective judgment of our people, when properly informed, has always steered the ship of state safely onward.

In 1917, Thomas Reed Powell in an address before the American Bar Association on "Law as a Culture Study," referring to the lawyer as a practitioner, said:

"But as a practitioner he has to deal with specific problems affecting individual clients. Necessarily upmost in his mind, is the effect of past judicial decisions on the interest of his client. And in the next case in which he is counsel, his mental outlook is the same. It is not for him to urge what breadth of vision and depth of understanding would prescribe, as the best rule to be made law. He is dealing with particular individual interests, not with general social interests. This is not his fault. It is only his intellectual misfortune. Breadth of vision and depth of understanding he sacrifices for gains of other kinds."

He also stated:

"The able lawyer is a busy lawyer. The compelling interest of the work that comes to his desk, leaves little time or energy for the contemplation of law as a social institution."

And further:

"If the lawyer is apt to forget the public interest when he is dealing with the machinery for making law, he is equally apt to fail to give due consideration to the public interest when he thinks about the product of that machinery. With a gaze fixed on the particular, he cannot see the general. And if he does not see the whole he cannot see true."

And further:

"And that attitude I find frequently marked by an absence of breadth of view and depth of appreciation. I find it often characterized by what seems to me a narrow individualism, a sanctification of the importance of individual interests, a disregard of the legitimate demands of social interest."

It was in a large measure this narrow view of individual rights on the part of the bar that gave rise to the movement for judicial recall. That movement has awakened the bar, and I already see the tendency on the part of the members of the bar to be alive to the possibility of the lawyer in influencing the trend of modern legislation along the line of constructive development. It has already brought forth some improvement in our judicial machinery. I note with interest the report of the Committee to oppose judicial recall, published in the July, 1919, number of the American Bar Association Journal. It so clearly indicates the awakening of the bar along the lines as suggested that I shall incorporate a part of it in this address.

That portion reads as follows:

"The fight which this Association made, through its committee against judicial recall, was a fight against socialism; and this Association determined not to stop its activity with the discrediting of this one phase of the doctrines of socialism. It expressly approved the work of this committee in opposing all anti-constitutional measures, when by its action in 1917, and again in 1918, it extended the scope of the work and the authority of this committee to opposition to all measures which were allied with that of the judicial recall. Accordingly, this committee has since, as it has to some extent before, actively opposed other measures advocated by socialists, such as that to deprive the courts, federal and state, of the power to declare invalid and unenforcible statutes which were repugnant to constitutional limitations. We have defended the fundamental right of private property, as against its elimination by the socialistic doctrine of confiscation or nationalization.

"Socialistic measures, destructive of our institutions, are now more actively pressed than ever before. Socialism feeds and fattens upon the disorganization, famine, and unrest necessarily following war conditions. The destructive doctrines of socialism were never more widely advocated than at the present time, and there was never so much danger as now that its converts might become, for a time at least, a majority of the voters in many states and communities, or even in the nation as a whole.

"Socialism is working in this country under many disguises. There is the straight out-and-out socialist, the disciple of Marx, who openly advocates the abolishment of our constitutions, of the right to private property, of all our industrial enterprises, so far as private control is concerned, and even of the institution of the family. His "dictatorship of the proletariat," which is the goal of the orthodox socialist, means the subversion of all our present institutions, social, industrial, and governmental. He is rampant and fights hand-in-hand with the anarchist and the up-to-date Bolshevist.

"Then there is the parlor socialist, the step-by-step socialist, who pretends to shrink from this or that particular doctrine of Marxian Socialism, while advocating allied doctrines no less dangerous than those he pretends to oppose. The fact is, that a socialist is a socialist, whether he be the apologetic professor of the university, blinded by sentimentality, or the paid servant of Lenin, sent to this country to teach violence to every civilized idea of government, of industry, or of society. Some of the leading editors of the Eastern press have been indulging in maudlin sentimentality in their views of the so-called Townleyism movement in the West. They shut their eyes to the real significance of this out-crop of pure socialism. Townley is the leader and dictator of this anti-constitutional movement. He is a socialist pure and simple, and so are his co-workers. And this Townley movement is allied with similar movements, under different names, working in Wisconsin, Michigan, Illinois, and other states. They have confiscated to state con-

trol many of the private industries of North Dakota, sometimes under the guise of compensation, but in most cases without any pretense of compensation for the destruction which has been brought about to private business. If the conditions in North Dakota were as favorable to the success of Bolshevism as they are in Russia, Townley would today be the Lenin of the Northwest and his Soviet Government would go to all the extremes of tyrannical dictatorship that are now suffered by the Russian people.

"Bolshevism, as experienced in Russia, is only the logical application of the doctrines of orthodox socialism. If you wish to know what is the ultimate goal of the socialists in this country, and the means by which they would attain their objects, you have only to look to Russia, where conditions have been favorable for a quick working out of the theories of socialism, which same theories and doctrines are advocated broadcast throughout this country today and whose adherents are increasing at a most dangerous rate. The "nationalization" of government, of industry, of society, of woman herself, which has been accomplished under Lenin, in Russia, is the very same sort of nationalization which has for years been advocated, and is today more than ever agitated, for adoption in this country. Preaching these subversive, destructive, and immoral theories, the socialistic propaganda is sown broadcast. Its literature has a wider distribution in this country today than that of any other propaganda, whether social or religious or governmental. It has its paid army of organizers and lecturers. It has its centers of distribution located in every populous community. It even has its endowed "schools." Note the so-called "Rand School of Social Science," of New York City, which is sending out a continuous shower of socialist literature, reaching every wage-earner in the land. Go to any library or reading room or meeting place used by wage-earners in any city, at any time, and you will find the latest editions of the socialist writings, the last pronouncement of Lenin or Trotsky, but (unless some pamphlet of this committee has been received and retained) not a page or a line of printed matter intended to inculcate the principles of good citizenship or of the protection to individual rights of property and liberty vouchsafed by our constitutional form of government.

"The only protection against these doctrines and schools of treason, sedition and revolution against our constitutional government, lies in a wide-spread and persistent campaign of education."

With this awakening on the part of the bar, comes a ray of light which leads me to believe that the lawyer is again soon to take his place as a powerful factor in shaping and molding legislation. We may even gather hope from some members of the legal profession, who, for political reasons or otherwise, have been in the advance guard of this socialistic movement. When it strikes at what they term their own individual rights, they wince and may possibly ultimately join forces with the members of the bar who see the tendency of the times and are alive to the possibility of the profession shaping and molding that tendency along the lines of constructive development.

In the State of North Dakota, where this movement has gone to the extreme, even the one member of the Supreme Court of that state, who has openly advocated a disregard of all constitutional limitations, we occasionally find him strongly on the side of individual rights and taking a peculiar stand against the tendency of the times. I refer to Judge Robinson and his dissenting opinion in the case of State v. Hauge, 164 N. W., page 292, wherein he disagreed with the majority of the court on the ground that the Teachers' Pension Act *did contravene the constitution of North Dakota,* in words as follows:

"It is an action to create a teachers' pension fund and to pension such teachers as may serve for a certain number of years, and contribute to the fund a certain percentage of their salary. As there are few who are so stupid as to make of teaching a life business, the chances are that one hundred persons must contribute to the

fund for every person who wins a prize or pension.

* * * * *

"The scheme is petty, wasteful and expensive. It has nothing to commend it. The teacher is fairly well paid, and his business is not in any way laborious or hazardous. It affords more leisure than any industrial business. In each week the teacher has only thirty working hours, which are reduced by holiday vacation."

And again in the case of Scott v. State, 163 N. W., page 816, Justice Robinson dissented from the majority opinion of the court on a conviction in a liquor case, in words as follows:

"In Cana of Galilee there was a wedding feast, and the mother of Jesus was there, and both Jesus and his disciples were called to the marriage, and when they wanted wine the mother of Jesus said unto him: They have no wine. Jesus said unto the servants: Fill the water pots with water. And they filled them up to the brim. Then he said unto them: Draw out now and bear unto the governor of the feast. And they bear it. When the ruler of the feast had tasted the water that was made wine, and knew not whence it was, the governor of the feast said to the bridegroom: Every man at the beginning doth set forth good wine, and when men have well drunk then that which is worse, but thou hast kept the good wine until now. This beginning of miracles did Jesus in Cana of Galilee and manifested forth his glory.

"It cannot be truly said that any person at that feast was guilty of keeping or maintaining a common nuisance, or that in North Dakota the recurrence of such a marriage feast would constitute the keeping or maintaining of a common nuisance. In scripture, drunkenness is everywhere denounced, but on occasions the drinking of wine and even strong drink is commended. Thus we did read: Give strong drink to him that is ready to perish and wine to those that be heavy of heart. Let him drink and forget his poverty and remember his misery no more. Go thy way, eat thy bread with joy, and drink thy wine with a merry heart, for God now accepteth thy works. He brought forth food out of the earth and wine that maketh glad the heart of man.

"And the Apostle Paul writes to the Apostle Timothy: Drink no longer water, but use a little wine for thy stomach's sake and thy often infirmities.

"The majority opinion says it is virtually conceded that if the testimony as stated be true, it is sufficient to establish the crime alleged. That is a grave mistake. There is no such foolish and false concession, and if there were, it would in no way justify the court in sustaining the conviction. The testimony wholly fails to show that the defendant kept a disorderly house or a common nuisance, or a house in any way given to the sale or drinking of intoxicating liquors, or that he did an injury to any person. Under the rulings of the court, were Christ to come to this state and to keep a house and to repeat the miracle of the marriage feast, he might be convicted and sentenced to the state's prison. That is neither law nor gospel.

"It is a matter of regret that in some cases judges are too ready to give a narrow and cold-blooded construction to drastic statutes and to impose on others burdens grievous to be borne, which they themselves touch not with one of their fingers.

"At the Grand Pacific I have a nice, exclusive bachelor apartment ($45 a month). Now, if the Governor, the Bishop, or one of the Justices call on me and I open a bottle of foamy Dublin stout—my elixir of life—and for his stomach's sake or for good fellowship give him a glass and join him in a drink with a thousand earnest wishes for his health and happiness, does that make my nice exclusive apartment a common nuisance? If I call on the good Bishop, and he treat me to a glass or a bottle of wine, does that turn his palace into a common nuisance? If not, then is there one law for the palace and another law for the cottage? In administering the law we should never forget that the primary purpose of law and government is to build up and not pull down, to assure the right of all to enjoy and defend life and liberty, to acquire, possess, and protect property, and to pursue and obtain safety and happiness."

"After reading some of the views expressed by the jurist from North Dakota, I am inclined to remark: 'Consistency, thou art a jewel.'"

Whether the members of the bar are pursuing the correct course to regain the waning influence of the lawyer, time only will tell. The part that the lawyers played during the great world war has added much to the influence and prestige of the bar. Thousands of lawyers, sturdy, brave and stalwart Americans, were in the training camps and under gunfire. They were "the very flower of American manhood" and gave their services at great personal sacrifice. Our national executive officers quickly accepted the offer of the bar associations to assist under the draft law, and the members of the bar everywhere gave their services gladly and gratuitously for the public good, and spent many weary and tedious hours filling out questionnaires. The Four-Minute Men organization was composed largely of the members of the bar. The speaking campaign for liberty loans were usually under the direction of some member of the bar and the speakers generally were lawyers. Men everywhere quickly recognized the influence of the bar in molding the trend of public thought. With the prestige gained during the war, with this general manifest awakening on the part of the bar, with an occasional reactionary trend comng from the school of socialists that I have referred to, I am satisfied that the time is now here when the lawyer is awakened to the necessity of taking his part in the social interests of the country; that by so doing his influence will be greater than ever in shaping the trend of modern legislation along the line of constructive development and preserving for posterity the fundamental principles of our Government under the new conditions in which we live.

GEORGE J. DANFORTH.

Sioux Falls, S. D.

BENEFIT SOCIETY—LAWFUL BENEFICIARY.

WHITEMAN v. HEINZMAN et al.

124 N. E. 405.

Appellate Court of Indiana. Oct. 7, 1919.

A member of a fraternal order was under no obligation, legal, moral, or equitable, to support his wife's nephews, so the reasonable presumption is that they were not dependent upon him for support, and the burden was on their guardian, interpleaded in an action by the member's administrator against the order, to show the nephew's independence on the member; that being necessary to make them proper beneficiaries under the by-laws.

NICHOLS, P. J. This was an action in the St. Joseph Circuit Court by the appellant against the appellee, the Supreme Tribe of Ben Hur, on a mutual benefit insurance certificate, issued by said appellee to W. T. Sherman Lammedee. The statute under which the appellee was incorporated, being Acts 1899, p. 177 (§ 5043, Burns' R. S. 1914), empowered said appellee to accumulate a fund that could be paid to the "families, heirs, blood relatives, affianced husband or affianced wife of or to persons dependent on the member." The by-laws of said appelle contain a like provision. Said appellee filed an interpleader admitting liability, but averring that the appellee Charles F. Heinzman, as guardian of the persons and estates of Louis, Jr., George, Jr., and Glen Heinzman was claiming the amount of said insurance, for and in behalf of his said wards. Said appellee insurance company thereupon paid said sum of $1,500 into court, and asked that said appellee, Charles F. Heinzman, guardian, be substituted as a party, and that said company be discharged.

Apellee Charles F. Heinzman, guardian, was thereupon made a party, and filed his answer in denial to the complaint and his cross-complaint, to which, after appellant's demurrer thereto, which was overruled, appellant filed his answer in three paragraphs, the first being a denial. To the second and third paragraphs of appellant's answer to the cross-complaint of appellee Heinzman, guardian (hereinafter mentioned as appellee), the said appellee filed his reply in general denial, and the cause, being at issue, was submitted to a jury for trial. At the close of appellee's evidence, appellant filed

his motion for an instruction to the jury to return the verdict for appellant, and a like motion at the close of all the evidence, both of which motions were overruled. There was a general verdict for the appellee for the $1,500 so paid into court as aforesaid. Appellant filed his motion for judgment in his favor, on the jury's answers to interrogatories submitted to it, notwithstanding the general verdict, which motion was overruled, to which ruling the appellant excepted, and after a motion for a new trial, which was overruled, this appeal.

Of the errors assigned, we shall consider only one, the error of the court in overruling appellant's motion for judgment on the answers to interrogatories, notwithstanding the general verdict.

It is averred in the complaint, with the usual averments of such complaints, that said policy was made payable to Laura L. Lammedee, the wife of said Sherman Lammedee, who died prior to the death of the said Sherman Lammedee; that after her death said Sherman Lammedee made Jane Lammedee, his stepmother, the beneficiary under said policy; that said Jane Lammedee died prior to the death of said Sherman Lammedee; that said Sherman Lammedee made no further provision for the disposition of said certificate and policy as provided in the by-laws of the said defendant association that § 121 of the by-laws of said defendant association provides:

"In the event of the death of a designated beneficiary prior to the death of the member and the member dies without having made a disposition of said portion or all of his certificate, the same shall be paid to the legal representative of said deceased member for the use and benefit of the deceased member's heirs if any survive."

Appellee's cross-complaint sets out § 118 of the insurance company's by-laws, a part of which is as follows:

"A member may designate as beneficiary, any one or more persons of any of the following classes, viz.: Families, heirs, blood relatives, affianced husband or affianced wife, or persons dependent on the member.

"It is expressly prohibited by the statutes under which this society is organized, to designate as a beneficiary, 'a friend, creditor or trustee,' not above contemplated."

It then avers the naming of Laura L. Lammedee as beneficiary, and her death, and the naming of Jane Lammedee as beneficiary, and her death, both as in the complaint, after which it avers that said assured executed his written change of beneficiary, designating appellee's ward as beneficiaries, which is as follows:

"Change of Beneficiary.

"I, William T. S. Lammedee, to whom the within certificate was issued do hereby revoke my former direction as to the payment from the benefit fund due me at my death, and now authorize and direct such payment to be made to Louis Heinzman, Jr., George Heinzman, Jr., and Glen A. Heinzman, bearing the relation to me of nephews.

"Dated at South Bend this 14th day of November, 1914.

"William T. S. Lammedee. [Seal.]"

And to his written request to the Supreme Scribe of said insurance company for such change, which is as follows:

"Dear Sir and Brother: It is my desire to have these nephews named as beneficiaries to my certificate, as they are partially dependent, and their ages are from five months to seven years old. They are children of my wife's brother. As I have no other beneficiary, kindly transfer and oblige.

"Yours in T. B. H.,

"William T. S. Lammedee."

Then follows a general averment that said wards were during all the time to the death of the said assured dependent on him, and that said assured had done all things necessary to be done on his part to perfect said change according to the by-laws of said company, in order to perfect said change of beneficiaries, but that he died before said Supreme Scribe had approved such change.

The appellant's second paragraph of answer to appellee's cross-complaint avers that the assured failed to make any change to said wards as beneficiaries that was approved or accepted by the insurance company, or to make any change in the beneficiary as provided in the by-laws that was accepted by the company, and that such attempted change was never approved or accepted by said company, and that such company declined and refused to grant the change of beneficiaries to the said wards until and only when said assured executed an affidavit that the said wards were dependent upon him for support, but that the assured failed and refused to make such affidavit.

Appellant's third paragraph contains no additional averments necessary to this decision. With these issues before it, the jury found, in answer to interrogatories submitted to it by the court, that the assured was related to appellee's wards by marriage only, and that they were his nephews only; that there was no evidence that said wards had lived continuously

with their parents in a home provided by their parents, nor was there evidence as to whom they had lived with, or how long; that there was no evidence that the parents of said wards furnished them a home, board, clothes and medical services, nor was there evidence as to who furnished said wards a home, board, clothes and medical services, nor when and to what extent they were furnished; that the assured did not declare that said wards were not dependent on him for support; that there was no evidence as to the extent to which the assured did support said wards; that said assured did not, a few days before his death, declare that he was unable to make an affidavit to the effect that said wards were dependent upon him, because he was not contributing to their support; that said assured left heirs at law surviving him.

Appellee's wards were not blood relatives, as it clearly appears by these answers to the interrogatories that they were but nephews by marriage. If, then, they recover, it must be because it appears that they were dependents of the assured. The degree of relationship alone certainly does not cast upon the assured any legal, moral, or equitable obligation to support appellee's wards. The reasonable presumption is that they were not dependent upon him for support, and the burden was upon the appellee to show such dependence.

For authorities as to what may constitute one a dependent of another, see Ownby v. Supreme Lodge Knights of Honor, 101 Tenn. 16, 46 S. W. 758; Martin v. Modern Woodmen of America, 111 Ill. App. 99; Lavigne v. Ligue des Patriotes, 178 Mass. 25, 59 N. E. 674, 54 L. R. A. 814, 86 Am. St. Rep. 460; Caldwell v. Grand Lodge M. W., 148 Cal. 195, 82 Pac. 781, 2 L. R. A. (N. S.) 653, 113 Am. St. Rep. 219, 7 Ann. Cas. 356; Royal League v. Shields, 251 Ill. 250, 96 N. E. 45; Ballou v. Gile, 50 Wis. 614, 7 N. W. 563; Supreme Lodge A. O. U. W. v. Hutchinson, 6 Ind. App. 399, 33 N. E. 816; Nye v. A. O. U. W., 9 Ind. App. 131, 150, 36 N. E. 429.

It clearly appears from these authorities that dependence that will permit a recovery as a beneficiary must be for support or maintenance in a material degree, and that the obligation to furnish it must rest upon some moral, legal or equitable ground, and not upon some purely voluntary or charitable impulse, or disposition of the member. By its answers, the jury finds that there was no evidence that the assured furnished a home, or board, clothing, or medical service, for appellee's wards. We can think of no substantial, material element of support that is not covered by such finding. Evidence of such support, if in existence, must have been available to appellee, and it was so necessary to his success in this suit that we conclude that such dependence could not be proven, and that therefore justice does not require that we grant a new trial.

The judgment is reversed, with instructions to the trial court to enter judgment in favor of the appellant for the $1,500 so paid into court, and costs of this action.

DAUSMAN, J., dissents.

NOTE—*Dependency Entitling Member in Fraternal Society to Designate Beneficiary.*—The instant case appears to have been decided by the Appellate Court on the theory, that a declaration by a member of a fraternal society that the beneficiaries named by him were not as a matter of fact shown by the proof so dependent on him as to entitle them to be named as such, and that the naming of them was never approved by the order issuing the benefit certificate.

In the first place, it seems to us that had the society ratified the designation, this would have been conclusive upon the world, and, in the second place, this being so, the society is bound by some rule against an arbitrary refusal to ratify a designation made in a regular way.

Take the status of members to a fraternal beneficial society, and it is one in which there is no vested right in any beneficiary and, therefore, the right of a member to name or change a beneficiary is greatly unrestricted and with its exercise there can be no arbitrary interference by the society.

Thus, it has been held that dependency must rest upon some moral, legal or equitable ground. E. g., it is stated in the request by the member that the "beneficiaries * * * are partially dependent and their ages are from five months to seven years old. They are children of my wife's brother." This act, at least, describes what the member believed was a "moral" or an "equitable ground."

A sister-in-law has been held a dependent where member and she shared house-keeping expenses for the benefit of themselves and a sister of the member. Wilber v. Supreme Lodge, 192 Mass. 477, 78 N. E. 445.

And so in Erickson v. Modern Woodmen, 43 Wash. 242, 86 Pac. 584, where member thus described her. This designation was held to call only for very slight evidence of dependency.

In Carmichael v. N. W. M. B. Assn., 51 Mich. 494, 16 N. W. 871, a designation was sustained of one not in any wise related to the member, but whom he regarded "very much as a daughter and she treated him with much of the care that relation would naturally call out."

"A state of dependency might exist even though no legal or moral duty rested upon the member to give aid to dependent." Royal League v. Shields, 251 Ill. 250, 96 N. E. 45, 36 L. R. A. (N. S.) 208. And "while no definition of dependency can be given that will include every case * * * the word 'dependent' as that term is used * * * is in some sense, at least, used as similar to the dependence which usually obtains in the family relation." Ibid, citing Modern Woodmen v. Comeaux, 79 Kan. 493, 101 Pac. 1, 25 L. R. A. (N. S.) 814, 17 A. & E. Ann. Cas. 865.

In Keener v. Grand Lodge, 38 Mo. App. 343, the court said: "I would not restrict dependents to those whom one may be legally bound to support, nor yet to those to whom he may be morally bound, but the term should be restricted to those whom it is lawful for him to support."

Bacon on Ben. Soc., 3d Ed., § 261, after a review of the cases, says: "From the definition and cases cited, it seems that whether or not a person is included among the dependents of a member of a benefit society is a question of fact and that each case must be decided on its own merits. In accordance with this liberal view of the Supreme Court of Michigan in defining who is included in the term family, we should say that if any person, relative of the member or not, was supported by him, directly or indirectly, or wholly or in part, at his home or abroad, because of a legal or moral obligation or merely from affection, such person might be called a dependent and be designated as the beneficiary of such member. But in all cases it would appear essential to apply the test of good faith, for mere capricious liking or temporary liberality would not make the recipient a dependent."

It appears to the annotator that the designation made by the member in the instant case fulfills every reasonable requirement in a lawful beneficiary. C.

ITEMS OF PROFESSIONAL INTEREST.

BAR ASSOCIATION MEETINGS—WHEN AND WHERE TO BE HELD.

Connecticut—Hartford, latter part of January, 1920.

Iowa—Cedar Rapids, June 24, 25, 1920.

Kansas—Topeka, January 27, 28, 1920.

Nebraska—Omaha, December 29, 30, 1919.

New York—New York City, January 16, 17, 1920.

Rhode Island—Providence, December 1, 1919.

Vermont—Montpelier, January 6, 7, 8, 1920.

HUMOR OF THE LAW.

"There must be an important piece of legislation under way," remarked a gentleman in the visitors' gallery.

"Why do you think so?" asked the guide.

"I notice a statesman down there on the floor of the House shaking his mane, bellowing at the top of his voice and waving his arms like a windmill. A man seldom gets worked up like that over trifles."

"I'm afraid you don't know a statesman when you see one, sir. That's the Hon. Jeremiah Piffle. He's asking an appropriation of $500,000 to make Horse Creek, Ala., navigable for canoes the year round."—Birmingham Age-Herald.

"I presume you're mighty glad the war is over."

"Well, I don' jes' know about dat," answered Mandy. "Cose I'se glad to have my Sam back home an' all dat, but I jes' know I ain't never gwine t' get money from him so regular as I did while he wuz in de Army an' de Government wuz handlin' his financial affairs.—Detroit Free Press.

A notorious tightwad being on trial for selling liquor, his lawyer was making a strong plea for probation.

"My client is not in the best physical condition, your honor, and imprisonment might kill him."

"Well, I don't necessarily have to send him to jail," said the judge in a kindly way.

"True, your honor, true."

"I could instead fine him $1000."

"Oh, your honor, that would kill him."—Kansas City Journal.

"Tommy, your head is wet. You've been in swimming against my orders."

"No, Pa. I was just standin' on the bank watchin' the other boys when that little Tompkins kid did a 'belly-buster' an' splashed me."

"Then, why wasn't your hat wet?"

"I had it in my hand, pa, fannin' myself."

"Umph! I guess I'll have to make a lawyer out of you, son."—Birmingham Age-Herald.

Village constable (to villager who has been knocked down by passing motorcyclist)—"You didn't see the number, but could you swear to the man?"

Villager—"I did, but I don't think 'e 'eard me."

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Arrest**—Common Law Bond.—A bond given to secure the release from arrest on mesne process of defendant in an action of tort, not in compliance with Rev. Laws, c. 169, § 2, which was voluntarily executed by the surety and at least impliedly accepted by plaintiffs in the action of tort, is a valid bond at common law.—Graves v. Apt, Mass., 124 N. E. 432.

2. **Attorney and Client**—Betrayal of Client.—One who seduces an agent to betray his principal, or an attorney his client, can hold none of the fruits of his bargain.—Barnett v. Kunkel, U. S. C. C. A., 259 Fed. 394.

3.——Compromise.—An attorney employed to prosecute or defend in one action has no authority, by virtue of such employment, to compromise or settle another cause of action.—Storey v. United States Fidelity & Guaranty Co. of Baltimore, Md., Idaho, 183 Pac. 990.

4. **Bankruptcy**—Accrual of Right.—A bankruptcy adjudication will not be set aside because the bankrupt filed his petition in anticipation of the early death of his mother, who had made a will, leaving him a substantial amount of money.—In re Swift, U. S. D. C., 259 Fed. 612.

5.——Jurisdiction.—The exclusive jurisdiction of bankruptcy court under Bankruptcy Act, § 2, investing it with such jurisdiction at law and in equity as will enable it to exercise jurisdiction in bankruptcy proceedings, does not extend to all suits affecting a bankrupt's estate, as appears from § 23.—In re Vadner U. S. D. C., 259 Fed. 614.

6.——Priority.—Services rendered by claimant to bankrupt under a contract by which he sold a business to bankrupt and agreed to conduct it for three years at an annual salary, which covered, not only his services, but the price of the business sold, held not those of a "workman, clerk, traveling or city salesman, or servant," and not entitled to priority of payment under Bankruptcy Act, § 64b (4), being Comp. St., § 9648.—In re Quackenbush, U. S. D. C., 259 Fed. 599.

7. **Banks and Banking**—Signature of Drawer.—A bank, as between itself and the bona fide holder of a check, is bound to know the signature of its customers, and cannot recover from such holder money paid to him on the subsequent discovery that the drawer's name was forged; hence if a depositor presents a check which he holds in good faith, drawn on the bank by another depositor, and the check is credited to him in his account and charged to the drawer, that is in effect a payment which the bank cannot repudiate; but in such case the depositor, if both payee and indorser of the check, is held to have knowledge of all facts except the signature of the drawer.—Woodward v. Savings & Trust Co., N. C., 100 S. E. 304.

8. **Bastards**—Acknowledgment of Paternity.—Acknowledgment must be definite and certain, and must plainly and unequivocally acknowledge the paternity; and in an action involving the right to inherit deceased's property the record of a bastardy proceeding against deceased, settled by compromise where paternity of the bastard was not acknowledged, is admissible in evidence.—Campbell v. Carroll, Ind., 124 N. E. 407.

9. **Bills and Notes**—Accommodation Signer.—An "accommodation note" is one as a matter of law upon which the accommodating party has placed his name without credit, to accommodate the person to whom he lends his name and credit, and, in the absence of a special agreement, without expecting to receive any benefit.—Stubbins Hotel Co. v. Beissbarth, N. D., 174 N. W. 217.

10.——Holder in Due Course.—In view of Comp. Laws 1915, § 6095, making transferee of note holder in due course to extent only of amount paid by him on purchase thereof before receiving notice of infirmity or defect, in a bank's action on notes discounted by it by crediting the payee's account, in the absence of proof as to when the account was drawn upon or exhausted by the payee, whether before or after the maturity of the notes, or before or after notice of fraud on the makers or protest, the trial court erred in holding the bank as a matter of law was a holder for value and in directing judgment.—Central Sav. Bank of Kentucky v. Stotter, Mich., 174 N. W. 142.

11. **Bonds**—Misrepresentation.—One who purchases a bond, honestly relying on the seller's representations that it is valid, when it is in fact invalid or worthless, may recover the price paid for it in an action for breach of warranty, though the seller may have acted in good faith, and the buyer may have had ample opportunity to examine the bond.—Burtch v. Child, Hulswit & Co., Mich., 174 N. W. 170.

12. **Bridges**—Independent Contractor.—An independent contractor for repairing a city bridge is liable for an injury to a person crossing the bridge, caused by his negligence in leaving it in an unsafe condition.—Oregon-Washington R. & Nav. Co. v. Branham, U. S. C. C. A., 259 Fed. 555.

13. **Brokers**—Conversion.—Where stockholders illegally sell stock carried for a customer on a margin without notice, they are liable for the highest price of the stock between the conversion and the trial.—In re Berberich's Estate, Pa., 107 Atl. 813.

14.——Tort.—Where a realty broker acts for two parties with adverse interests in effecting an exchange of lands, with the knowledge and consent of both, neither principal is liable to the other for the broker's tortious acts, without collusion or direct participation of one of principals.—Ringer v. Wilkins, Idaho, 183 Pac. 986.

15. **Carriers of Goods**—Bill of Lading.—Congress may prescribe what terms common carriers, subject to Interstate Commerce Act, Feb. 4, 1887, and amendments (Comp. St., § 8563 et seq.), may insert in their bills of lading.—Alaska S. S. Co. v. United States, U. S. D. C., 259 Fed. 713.

16.——Burden of Proof.—Where a shipper undertakes to load and count the goods, the carrier's burden of proof is shifted, and the shipper must affirmatively show his damage.—Produce Trading Co. v. Norfolk Southern R. Co., N. C., 100 S. E. 316.

17. **Champerty and Maintenance**—Quitclaim Deed.—A quitclaim deed by record owner of land, who was out of possession, cannot be deemed champertous, where the character of the possession at the time of the execution of the

deed was not shown.—Pines v. Traktman, N. Y., 178 N. Y. Sup. 90.

18. **Charities**—Uncertainty. — Trust to use "for support of the church or such benevolent purposes as the trustees of said church shall direct" held uncertain, and hence void; it being discretionary with trustees as to whether trust shall be used for charitable or noncharitable purposes, and "benevolent purposes" not necessarily being strictly charitable purposes.—Smith v. Pond, N. Y., 107 Atl. 800.

19. **Contracts**—Assent.—Though an assent to an offer is requisite to the formation of a contract or agreement, such assent is a condition of mind, and may be either expressed or merely evidenced by circumstances. — Cole-McIntyre-Norfleet Co. v. Holloway, Tenn., 214 S. W. 817.

20.——Construction.—General words in one part of an act or instrument may be controlled and restrained by particular words in another, taken as expressing the intention with more precision.—Brunson v. Carter Oil Co., U. S. D. C., 259 Fed. 656.

21.——Intent.—A contract should be construed to effectuate the intent of the parties when it was made.—Whitman v. Whitman, Mich., 174 N. W. 153.

22.——Single Transaction.—Where contractor mailed subcontract, and sent subcontractor telegram relating to the subcontract on same day, the subcontract and telegram were parts of a single transaction, and both may be examined for purpose of ascertaining the agreement of the parties.—Interstate Const. Co. v. United States Fidelity & Guaranty Co., Mich., 174 N. W. 173.

23. **Corporations**—Dissolution. — Under Rev. Codes Mont., §§ 3906, 6700, on dissolution of a corporation its directors become trustees, with power to settle its affairs and to sell property, but without title, which subject to the trust, vests in the stockholders, who as to its real estate become tenants in common.—Barker v. Edwards, U. S. C. C. A., 259 Fed. 484.

24.——Statutory Liability.—A receiver for a corporation cannot maintain an action to enforce the statutory liability of officers or directors, unless expressly so authorized by statute.—Stevirmac Oil & Gas Co. v. Smith, U. S. D. C., 259 Fed. 650.

25. **Covenants**—Building Restriction.—Where lots had been sold subject to building restrictions, grantor's deed to purchaser of a lot, quitclaiming any interest in the lot, had the effect of releasing the restrictions as to the lot, so far as it was in the grantor's power to release them. —Werner v. Graham, Cal., 183 Pac. 945.

26.——Servitude.—A restriction in a deed against inclosure beyond a certain point, and against the erection of any building on the land, constituted an equitable servitude or easement, passing with the conveyance of the premises to the original grantees and all those subsequently claiming under them in whole or in part; a reference to the grantor's immediate predecessor neither enlarging nor restricting the grant. —Town of Amherst v. Gates, Mass., 124 N. E. 437.

27. **Criminal Law**—Confession.—A confession must be full, free and voluntary, and there must be nothing about it which involves duress.—United States v. Fricke, U. S. D. C., 259 Fed. 673.

28.——Duress of Witness.—Where testimony vital to conviction is given under duress, no conviction based thereon will be permitted to stand.—Ford v. United States, U. S. C. C. A., 259 Fed. 552.

29. **Damages**—Disfigurement.—In action for injuries resulting in permanent scar on face, jury could award damages for permanent disfigurement.—Main v. Grand Rapids, G. H. & M. Ry. Co., Mich., 174 N. W. 157.

30.——Subrogees.—Where two sisters, passengers on a steamer, contracted typhoid fever as a result of drinking impure water furnished, held that they could recover for medical expenses, and the expense of nurses, though such sums were paid by their parents.—Chicago, D. & G. B. Transit Co. v. Moore, U. S. C. C. A., 259 Fed. 490.

31. **Death**—Probable Earning Power.—In action for the death of a five-year-old boy, brought by his mother as administratrix, father's financial condition may be shown as bearing upon the probability of the child being put to work earning money for the father.—Robins v. Director general of Railroads, Mich., 174 N. W. 124.

32. **Dedication**—Recorded Plat. — Though a recorded plat showing lots and streets did not cover land in an incorporated town, it nevertheless worked a common law dedication.—Iowa Loan & Trust Co. v. Board of Sup'rs of Polk County, Iowa, 174 N. W. 97.

33. **Deeds**—Estoppel.—Where a scheme of residential development was projected, and deeds containing restrictions against business buildings, etc., were made by the grantor, but the restrictive scheme for 50 years subsequently was abandoned by the grantor and its grantees, so that the character of the neighborhood changed from that contemplated, the holders of deeds, participants in the violation of the restrictions, canot enjoin other landowners from erecting a silk mill.—O'Dea v. Ugnon, N. Y., 107 Atl. 794.

34.——Undue Influence.—A deed executed by an aged man in the last stages of consumption, whereby he conveyed all of his property to one not related by blood in consideration of an agreement to maintain him during his life, etc., held, under the circumstances, invalid for want of consideration and on the ground that it was procured by undue influence.—Bennett v. Fleming, Mich., 174 N. W. 131.

35. **Divorce**—Allowance to Wife. — Where husband and wife were married about 30 years and reared a large family, and wife was granted a divorce for his cruelty, she should be assigned at least one-half of net worth of property jointly accumulated, in severalty as her separate property, and, pending such division, should be allowed a certain sum per month for her support.—Van Vleet v. Van Vleet, N. D., 174 N. W. 213.

36.——Appellate Court.—On appeal to review a decree of divorce awarding permanent alimony, the Supreme Court may enforce payment of temporary alimony pending appeal, and plaintiff in error, failing to make such payment as directed by the court after an opportunity to be heard, may be adjudged in contempt and punished, which punishment may include a dismissal of his appeal.—Hansing v. Hansing, Okla., 183 Pac. 978.

37. **Ejectment**—Burden of Proof.—In action to recover land, the burden rests wholly on plaintiff, who must recover, if at all, on the strength of his own title, and not on the weakness of defendant's.—Singleton v. Roebuck, N. C., 100 S. E. 313.

38. **Equity**—Fraud.—Equity will leave parties to fraudulent transaction where they have placed themselves.—Lanktree v. Lanktree, Cal., 183 Pac. 954.

39. **Estoppel**—Conduct. — To constitute an "estoppel in pais" or equitable estoppel, there must be conduct amounting to a representation or a concealment of material facts, such facts must be known to the party estopped or knowledge thereof imputable to him and unknown to the opposite party, and such conduct must be done with intent that it will be acted on by the other party, and furthermore such conduct must in fact be acted upon.—L. J. Upton & Co. v. Ferebee, N. C., 100 S. E. 310.

40. **Evidence**—View of Premises.—In an action against a street railway for injuries in a collision, the fact that the jury later viewed the scene shown by a photograph did not render it incompetent.—Morrissey v. Connecticut Valley St. Ry. Co., Mass., 124 N. E. 435.

41. **Exchange of Property**—Laches.—One who exchanged lands for corporate stock under misrepresentations of the value of the stock, giving his note for the difference in value, held not guilty of laches in not demanding rescission or claiming damages, but setting up the misrepresentation as a foundation for a cross-action for

cancellation and damages when sued on the note in the fall after the spring in which he discovered the falsity of the representations of the value of the stock.—McDonald v. Lastinger, Tex., 214 S. W. 829.

42. **False Imprisonment**—Probable Cause.—When plaintiff shows by his affidavit that he was arrested on a capias at the instance of defendant, that the arrest was without probable cause on the part of defendant, and the proceeding was subsequently voluntarily dismissed, he makes a prima facie case of false imprisonment.—Rupright v. Muskegon Circuit Judge, Mich., 174 N. W. 138.

43. **Fraud**—Election of Remedy.—Defrauded purchasers could either have disaffirmed the contract, tendering reconveyance, with demand for refund or reconveyance of their own transferred property, and, if refused, sued to recover the same, or have affirmed the contract, and, retaining what they had received under it, sued to recover damages for fraud.—Barnhardt v. Hamel, Mich., 174 N. W. 182.

44. **Guaranty**—Alteration. — Alteration of note, obligating maker to pay 7 per cent, instead of 6, as originally agreed to, without guarantor's consent, discharged guarantor's liability, under Civ. Code, § 2819, notwithstanding § 2820, providing that creditor's void or voidable promise does not alter obligation or suspend or impair creditor's remedy against principal, within former statute, providing that such alteration of obligation or impairment of remedy exonerates guarantor.—Nissen v. Ehrenpfort, Cal., 183 Pac. 956.

45. **Homestead**—Occupation.—The homestead law should be and is liberally construed to effectuate its beneficent objects; but the principle of liberal construction cannot be so far extended as to deny the effect to the plain language employed by the legislature in limiting the assertion of the homestead right in case where the property is not in fact occupied as the homestead.—Sexton v. Sutherland, N. D., 174 N. W. 214.

46. **Improvements**—Willful Trespass. — One who, with full knowledge of the facts which make his claim of title to land invalid, enters thereon and commits acts of trespass, is a willful trespasser within the meaning of the law, though honestly believing that on such facts the law gives him good title.—Pittsburgh & West Virginia Gas Co. v. Pentress Gas Co., W. Va., 100 S. E. 296.

47. **Indians** — Allotments. — Congress has plenary power over restricted lands allotted to Indians as long as the tribal relation exists, until by some act the title is vested by purchase in some party other than the allottee.—In re Jessie's Heirs, U. S. D. C., 259 Fed. 694.

48. **Insurance**—Dependents. — Nephews by marriage of a member of a fraternal order held not substantially, materially supported by him to give their guardian the right to recover from the order for their benefit on the member's death under his designation of them as his beneficiaries; a by-law permitting designation of dependents as beneficiaries.—Whiteman v. Heinzman, Ind., 124 N. E. 405.

49.——Misrepresentation.—The acts of insured, who was an alcoholic when he applied for insurance, not having been fraudulent, and the insurer's agent having had knowledge of the facts that otherwise would have avoided the policy, the misrepresentations of insured, that he was not an alcoholic, had not been treated for illness, etc., did not avoid it.—Metropolitan Life Ins. Co. v. Wathen, Ind., 124 N. E. 403.

50. **Judgment**—Vacation of.—In order to have a final judgment vacated or set aside at a subsequent term, the petition must disclose some legal or equitable ground for the granting of such relief.—Skinner v. Waits, Tex., 214 S. W. 844.

51. **Landlord and Tenant**—Assumption of Obligation.—Where an assignment of lease provided that the assignee assumed all obligations of the lease, and agreed to hold the assignor lessees harmless, to which the lessor indorsed his consent and acceptance, the assignee occupied the position of the original lessees with all their obligations, including payment of rent.—Berelos v. Roth, Ind., 124 N. E. 410.

52.——Repudiation of Lease.—Letter of lessor, on failure to receive back signed by stipulated time a duplicate of the lease, stating that all negotiations were terminated, and he should proceed at once to take steps to let the property, held an absolute repudiation of the lease contract, excusing the tenant from thereafter making any tender of the duplicate executed lease.—Diebold Safe & Lock Co. v. Morse, Mass., 124 N. E. 429.

53. **Master and Servant**—Extra Compensation.—One employed to perform services for a stated remuneration may be entitled to recover additional compensation for services rendered at request of employer, though contract of employment makes no provision for extra compensation but the right thereto depends on the existence of a contract, express or implied.—Pittsburgh, C., C. & St. L. R. Co. v. Marable, Ind., 124 N. E. 393.

54.——Fellow Servant.—Servant, suing for injury from negligence of fellow servant, has the burden of proving his incompetency, master's negligence in employing or retaining him, and injury resulting from such incompetency.—Kanotex Refining Co. v. Bonifield, Okla., 183 Pac. 971.

55.——Non-Delegable Duty. — Plaintiff employe's recovery for personal injuries cannot be defeated because repairmen performing a nonassignable duty of defendant employer were negligent.—American Locomotive Co. v. Thornton, U. S. C. C. A., 259 Fed. 405.

56.——Safe Place to Work.—An employer must provide a reasonably safe place for work, and reasonably safe and convenient means of access to the premises and to the places thereon assigned for work.—Wilkin v. H. Koppers Co., W. Va., 100 S. E. 300.

57. **Mechanics' Liens**—Estoppel.—Under Code Civ. Proc., §§ 1187, 1192, one who stands by and sees another improve his property without putting him on notice of the true ownership of the property, must be held responsible for the value of the improvements, not being an innocent party under the conditions.—Krenwinkel v. Henne, Cal., 183 Pac. 957.

58. **Mortgages**—Defective Advertisement — The acquiescence of the mortgagor in the conduct of a foreclosure sale will cure any defect as to advertisement.—Brewington v. Hargrove, N. C., 100 S. E. 308.

59. **Municipal Corporations**—Fire Prevention.—Section 18 of the Chicago fire prevention ordinance, requiring certain buildings to be equipped with automatic sprinklers, and providing that the plan for such equipment shall be submitted to, and approved by, the chief of the bureau of fire prevention and public safety, is not invalid, as delegating to that officer arbitrary power, or the power to legislate.—City of Chicago v. Washingtonian Home of Chicago, Ill., 124 N. E. 416.

60. **Negligence**—Infancy. — The defense of contributory negligence may be invoked in actions on behalf of children who are of an age sufficient to exercise discretion for the avoidance of an injury to themselves, the age of discretion depending on the circumstances and the intelligence and capacity of the child.—Todd v. Orcutt, Cal., 183 Pac. 963.

61. **Patents**—Estoppel. — That a defendant made infringing articles in the belief that it had a valid license, which was in fact void, and under which it now makes no claim, does not estop it from denying the validity of the patent.—Schulte v. Colorado Tire & Leather Co., U. S. C. C. A., 259 Fed. 562.

62.——Experimentation.—While no hard and fast formula need be given, and experimentation may be necessary to get the best results, the disclosure in a process patent must be sufficient to enable those ordinarily skilled in the art to

produce the substantial result desired.—Featheredge Rubber Co. v. Miller Rubber Co., U. S. C. C. A., 259 Fed. 565.

63. **Post-Office**—Scheme to Defraud.—An indictment, charging that defendant devised a scheme and artifice to defraud, and used the mails in carrying out the scheme, which consisted of representations of supernatural powers, held sufficient to charge an offense.—Crane v. United States, U. S. C. C. A., 259 Fed. 480.

64. **Principal and Agent**—Dual Capacity.—Where principals have knowledge of the fact that the agent is acting in a dual capacity and with such knowledge assent to his so doing, he may recover for his services from either party.—Chandler v. Preston, Mich., 174 N. W. 205.

65. **Principal and Surety**—Commercial Surety.—A commercial surety company which signed the bond of a clerk of the court, and which solicited the business, cannot invoke strictly technical relief under the rules of strictissimi juris applicable to uncompensated sureties and bondsmen.—City of Grand Rapids v. Krakowski, Mich., 174 N. W. 301.

66. **Public Lands**—Patents.—On cancellation of patents to public lands for fraud, the legal title becomes reinvested in the United States, where the equitable title remained, as of the date of the patents, and the land at once becomes subject to a prior act including it within the limits of a forest reserve.—Byron v. United States, U. S. C. C. A., 259 Fed. 371.

67. **Quieting Title**—Constructive Possession.—Constructive possession following legal title to fee is sufficient, in absence of hostile possession, for maintenance of action for cancellation, as a cloud on title, of certificate of sale of the land for years for drainage assessment.—Whitney v. Considine Investing Co., N. Y., 178 N. Y. Sup. 68.

68. **Railroads**—Estoppel.—Where switching and storage tracks crossing city streets were built on a railroad's right of way at considerable expense without city's permission, and railroad continued to use the tracks for six years without objection, the city is estopped from requiring railroad to remove its tracks.—City of Flint v. Grand Trunk Western Ry., Mich., 174 N. W. 147.

69. **Receiving Stolen Goods**—Constructive Possession.—The doctrine that one intending to receive stolen goods, but withdrawing before committing the crime, cannot be convicted, is inapplicable, where accused had constructive possession of the property.—Le Fanti v. United States, U. S. C. C. A., 259 Fed. 460.

70. **Reformation of Instruments**—Intention.—When there is no mistake about grantor's intention, but only in the writing, the mistake of the scrivener, no matter how it occurred, ought to be corrected.—Delap v. Leonard, N. Y., 178 N. Y. Sup. 102.

71.——Mistake.—Mistakes which might have been avoided by common and ordinary care, and which result from negligence, will not be reformed in equity.—Mullen v. Cronan, N. Y., 107 Atl. 793.

72. **Sales**—Counterclaim.—A counterclaim, based on plaintiffs' failure to deliver goods bought by defendants, is insufficient to set out a cause of action, where it was not alleged that at appointed time of delivery defendants were able and willing to make the payment required.—Bigio v. Steinbrugge, N. Y., 178 N. Y. Sup. 110.

73.——Nondelivery.—Generally, buyer's damages for seller's nondelivery of goods is the difference between the contract price and the market price of goods at time and place of delivery.—Solomon v. Richardson, Mich., 174 N. W. 125.

74.——Offer and Acceptance.—Where order for meal was solicited by wholesaler's drummer, wholesaler's delay for 60 days after order was taken in notifying the customer that it had not confirmed or accepted the order as required held to be unreasonable, and to effect an acceptance of the order.—Cole-McIntyre-Norfleet Co. v. Holloway, Tenn., 214 S. W. 817.

75. **Specific Performance**—Abetting Breach.—A party to a contract who aided and abetted actions by others which were the sole cause of a breach of contract by the other party cannot urge such breach as a defense to a suit for specific performance.—Gas Securities Co. v. Antero & Lost Park Reservoir Co., U. S. C. C. A., 259 Fed. 423.

76. **Specific Performance**—Oral Contract.—An action for specific performance of an oral contract for conveyance of land will not lie, unless proof is clear, satisfactory, and unequivocal that contract was made and substantially performed by party seeking its enforcement.—Powers v. Norton, Neb., 174 N. W. 223.

77. **Street Railroads**—Expiration of Franchise.—On expiration of the franchise rights of a street railroad company to use the streets of a city if the company at the city's request continues to occupy the streets and to give service, the regulatory power of the city can be exercised only subject to the condition that it must not bring about confiscation.—City of Toledo v. Toledo Rys. & Light Co., U. S. C. C. A., 259 Fed. 450.

78. **Tenancy in Common**—Partition.—A tenant in common cannot convey or lease a fractional part of the common estate by metes and bounds without the consent of the other tenant in common, so as to make an arbitrary partition of the common estate, or to exclude the nonassenting tenant from any part of the premises.—Pastine v. Altman, Conn., 107 Atl. 803.

79. **Treason**—Overt Act.—The crime of treason denounced by Const. art. 3, § 3, Cr. Code, § 1, cannot be committed unless there be an overt act, which is an act in furtherance of the crime, which consists either in levying war or adhering to the enemies of the United States, etc.—United States v. Fricke, U. S. D. C., 259 Fed. 673.

80.——Overt Act.—In view of the history relating to the provision of the United States Constitution that no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, as well as the debates at the time of the adoption of the provision, it is necessary to produce two direct witnesses to the whole overt act; and while it may be possible to piece bits together of the overt act, yet each part must have the support of two oaths, and hence conviction cannot be had on the testimony of one witness together with circumstantial evidence, though it was well-nigh conclusive.—United States v. Robinson, U. S. D. C., 259 Fed. 685.

81. **Treaties**—Alien Anarchist.—Congress, through Act Oct. 16, 1918, having clearly declared against all alien anarchists, it cannot be successfully contended by Italians about to be deported, so-called "Philosophical" anarchists, who do not advocate the use of force and violence, that the deportation of such anarchists would be in violation of the treaty between the United States and Italy, placing Italians on a level with native-born citizens, who, under the right of freedom of speech, may teach anarchistical theories with immunity.—Ex parte Pettine, U. S. D. C. 259 Fed. 733.

82. **Wills**—Codicil.—Codicil, not specifically referring to any will, must be taken to refer to the last executed will.—In re Graham's Estate, Cal., 183 Pac. 952.

83.——Issue Defined.—The rule that the word "issue" will be construed to mean descendants generally yields to an intent manifested in some part of the will to limit the meaning to children only.—In re Durant's Estate, N. Y., 178 N. Y. Sup. 111.

84. **Woods and Forests**—Cancellation of Patent.—On cancellation of patents to public lands for fraud, the legal title becomes reinvested in the United States, where the equitable title remained, as of the date of the patents, and the land at once becomes subject to a prior act including it within the limits of a forest reserve.—Byron v. United States, U. S. C. C. A., 259 Fed. 271.